

October 23, 2015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article number: 7015 1520 0003 0792 0053

Mr. Diego Bastidas, Director
Environmental, Health and Safety
Department of Health-Public Health Laboratory
455 First Avenue
New York, NY 10016

**RE: Notice of Violation/RCRA 3007 Information Request Letter
NYC Department of Health-Public Health Laboratory
NYD986904035**

Dear Mr. Bastidas:

The United States Environmental Protection Agency (EPA) is charged with the protection of health and the environment under Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6901, 6928.

On or about May 11-12, 20 2015, a duly authorized representative of the U.S. Environmental Protection Agency conducted a compliance evaluation inspection of Department of Health-Public Health Laboratory located at 455 First Avenue, New York, NY 10016, pursuant to Section 3007 of RCRA, 42 U.S.C. Section 6927. During the inspection, violations of RCRA were observed.

Pursuant to RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA promulgated rules, regulations, and standards governing the handling and management of hazardous waste as set forth in 40 C.F.R. Parts 260-272. For the purposes of this Notice of Violation and Information Request, the hazardous waste regulations governing the generation of hazardous waste were promulgated in 1980 and amended by HSWA in 1984.

The State of New York is authorized by the EPA to conduct a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. Section 6926 and is authorized to enforce RCRA. The EPA has retained its authority to enforce the hazardous waste rules and regulations in the State of New York.

The Notice of Violation (NOV) portion of this letter (see Enclosure I) is issued pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by RCRA and HSWA, 42 U.S.C.

§§ 6901, 6928. Issuance of this NOV and compliance with its terms does not preclude EPA from taking formal enforcement action against you and/or your company, including a monetary penalty, under Section 3008 of RCRA, 42 U.S.C. Section 6928, or any other applicable regulation or statute.

Pursuant to the provisions of Section 3007 of RCRA, 42 U.S.C. Section 6927, EPA may require parties who handle or have handled hazardous waste to provide information relating to such wastes. Pursuant to the statutory provisions cited above, EPA hereby requires that you provide the information requested in Enclosure II, using the instructions and definitions included in Enclosure III. This information is necessary to determine the compliance status of Department of Health, Public Health Laboratory located at 455 First Avenue, New York, NY 10016

Please provide the information requested no later than (30) calendar days from receipt of this letter. Requests for additional time must be justified. Requests for additional time must be made within ten (10) calendar days of receipt of this letter. The response must be signed by a responsible official or agent of your company, using the form in Enclosure IV of this letter. Failure to respond to this letter truthfully and accurately within the time provided may subject you to sanctions authorized by federal law, including but not limited to a potential enforcement action pursuant to Section 3008 of RCRA, 42 U.S.C. 6928. Please also note that all information you provide may be used in an administrative, civil judicial, or criminal action.

The response to the request in the enclosure must be mailed to the following address:

Abdool Jabar
Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency- Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

You may, if you so desire, assert a business confidentiality claim covering all or part of the information herein requested. The claim may be asserted by placing on (or attaching to) the information at the time it is submitted, a cover sheet, stamped or typed with the legend, or other suitable form of notice, such as "trade secret," "proprietary," or "company confidential". The claim should set forth the information requested in 40 Code of Federal Regulations (40 C.F.R.) Section 2.204(e)(4). Information covered by such a claim will be disclosed by EPA only to the extent permitted by, and by means of procedures set forth in, 40 C.F.R. Part 2. EPA will review the information to determine the extent of confidentiality of the information, and may, at its discretion, challenge the confidentiality claim pursuant to the procedures set forth at 40 C.F.R. Part 2. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

This information request is not subject to the requirements of the Paperwork Reduction Act

(PRA), as amended, 44 U.S.C. Part 3501 et seq.

Failure to respond in full to this requirement is a violation of RCRA and may result in federal enforcement action pursuant to Section 3008 of RCRA, 42 U.S.C. Section 6928, including the assessment of a monetary penalty. Such penalties may be up to \$37,500 per day per violation.

For consistency, please provide your answers in a format which is keyed to the questions outlined in Enclosure II.

If you have any questions regarding this matter, please contact Mr. Abdool Jabar at (212) 637-4051 or jabar.abdool@epa.gov.

Sincerely yours,

Original signed by Derval Thomas for LV.

Leonard Voo, Chief
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance

Enclosures: Enclosure I Notice of Violation
 Enclosure II Information Request
 Enclosure III Instructions & Definition
 Enclosure IV Certification of Answers

cc: Kelly Lewandowski, Supervisor
 Hazardous Waste Compliance Unit
 New York State Department of Environmental
 Conservation

bcc: Derval Thomas, DECA-RCB
 Leonard Voo, DECA-RCB
 Abdool Jabar, DECA-RCB
 RCRA files

ENCLOSURE I
NOTICE OF VIOLATION

On or about May 11-12, 20, 2015, a duly authorized representative of the U.S. Environmental Protection Agency conducted a compliance evaluation inspection of Department of Health-Public Health Laboratory located at 455 First Avenue, New York, NY 10016. At the time of the inspection your facility was found to be out of compliance with regulations applicable to generators of hazardous waste. Based on observations made during the inspection, it was determined that the following violations of RCRA regulations existed at your facility:

1. Pursuant to Pursuant to 6 NYCRR Section 372-2(a) (2), a person who generates a solid waste must determine whether that solid waste is a hazardous waste using the procedures specified in that provision.

At the time of the inspection, PHL failed to make hazardous waste determinations in the following areas:

- (1) In Room 221, a cabinet containing a number of containers of expired chemicals.
- (2) In Room 263, Kinyoun and Auramin staining waste containing acid alcohol disposed down the drain.
- (3) In Room 473, gram staining waste disposed down the drain and 13 mercury thermometers were stored over ten years.
- (4) In Room 463, gram staining waste disposed down the drain.
- (5) In Room 453, gram staining waste disposed down the drain.
- (6) In Room 451, gram staining disposed down the drain.
- (7) In Room 451, expired chemicals including acetone poured down the drain.
- (8) In Room 443, three four 100 ml of corrosives and nine 500 ml. bottles of sodium hydroxide with dates which were expired.
- (9) In Room 429, one 500 ml. of ammonium hydroxide opened in 1994 and not being used.
- (10) In Room 966/967, one 100 ml. of isopropanol with a date which was expired.
- (11) In the room adjoining the hazardous waste container storage area, there were two 55 gallon drums of ethanol - one was filled and the other was ¼ filled. There were eight 500 ml. containers of ethanol; the containers were dated April '09. There were also three 2 gallon and one 5 gallon containers of ethanol.

2. Pursuant to 6 NYCRR Section 373-3.9(d)(3), a generator storing containers holding hazardous waste must mark such containers with the words “Hazardous Waste” and with other words identifying their contents.

At the time of the inspection, PHL stored the following hazardous waste in the container storage area and did not mark them with the words “hazardous waste” and words to describe their contents:

- (a) There were twenty one 4 liters containers which were not labeled with the words “hazardous waste” and other words to identify their contents, however they were listed with the words “chemical waste”.
- (b) There were eighteen 1 gallon containers which were not labeled with the words “hazardous waste” and other words to identify their contents. There were nine 1 liter containers not labeled with the words “hazardous waste” and other words to identify the contents.
- (c) There was also a number of small containers of discarded chemicals which were not labeled with the words “hazardous waste” and other words to identify their contents.

3. Pursuant to 6 NYCRR Section 372-2(a)(8)(ii), a small quantity generator may store hazardous waste in a container storage area provided the date upon which each period of generation begins is clearly marked and visible for inspection on each container.

At the time of the inspection, PHL stored the containers described in paragraph 2(a), 2(b) and 2(c) in the container storage area and the accumulation start dates were not marked on the containers.

4. Pursuant to 6 NYCRR Section 372-2(a)(8)(i)(a)(2), a small quantity generator must mark each container of hazardous waste in satellite accumulation areas with the words “Hazardous Waste” and with other words to describe their contents.

At the time of the inspection, PHL stored hazardous waste in the following areas and the containers were not marked with the words “Hazardous Waste” and other words to describe their contents:

- (a) In room 221, one cabinet with chemicals with expiration dates;
- (b) in room 274, two containers not labeled hazardous waste but labeled chemical waste 70 % isopropanol and 30 % ethanol and seven 4 liter containers storing hazardous waste in a cabinet and the containers not labeled “hazardous waste” and with words to identify the contents; however they were listed with the words “chemical waste”;
- (c) In room 568, one 5 gallon container accumulating hazardous waste;

(d) In room 559, one 5 gallon and one 750 ml. container accumulating hazardous waste.

5. Pursuant to 6 NYCRR Section 373-3.9(d)(1), all containers except those in use must be closed.

At the time of the inspection, PHL stored hazardous waste in one 5 gallon container in room 568 and one 5 gallon container in room 559 and the containers were not closed.

6. Pursuant to 6 NYCRR Section 373-3.9(e), a small quantity generator must inspect hazardous waste containers in a hazardous waste container storage area and the storage area weekly.

At the time of the inspection, the facility representative stated that the containers and the hazardous waste container storage area were not inspected weekly for the past three years.

7. Pursuant to 6 NYCRR Section 373-3.3(g)(1), a facility owner/operator must attempt to make arrangements as appropriate with local authorities (police, fire department and hospital) for the type of waste handled at the facility and the potential need for the services of these organizations.

At the time of the inspection, PHL did not attempt to make arrangements with the police and fire departments and hospital in accordance with the requirement above.

8. Pursuant to 6 NYCRR Section 372.2 (a)(8) (iii)(e)(2)(ii), the location of the fire extinguishers and spill control material and, if present, fire alarm must be posted next to the telephone.

At the time of the inspection, PHL did not post the location of the fire extinguishers and the spill material next to the telephone.

9. Pursuant to 6 NYCRR Section 373-3.3(d), facility communications or alarm systems, fire protection equipment, and spill control equipment are tested and maintained as necessary to assure their proper operation in time of emergency.

At the time of the inspection, the fire extinguishers in the hazardous waste container storage area, rooms 271 and 274 were not inspected for 2 months; the one in room 345 was not inspected for 9 months.

ENCLOSURE II

1. With regard to the violations cited in the above Notice of Violation (Enclosure I), please provide (1) a description of the actions taken to correct the violations cited and provide documentation, including photographs (where applicable), verifying that each violation has been corrected; or (2) a rebuttal of the violations.

The relevant time period for the following questions is May 2012 through the date of receipt of this letter, unless otherwise specified.

2. During the inspection, the waste generated during gram staining in rooms 451, 453 and 473 was poured down the drain. Also, the waste from Kinyoun and Auramin staining done in room was poured down the drain.

- (a) (i) Did your facility do a hazardous determination on the waste generated?
(ii) If yes, when was the determination done? Please provide documentation.
(iii) Estimate the amount of waste that was poured down the drain on a monthly basis since May 2012.

(b) At the time of the inspection, a facility representative stated that expired chemicals including acetone were poured down the drain.

- (i) Was this practice stopped? If so when was it stopped?
(ii) Provide a list of the expired chemicals poured down the drain.
(iii) Estimate the amount of each of the identified chemicals poured down the drain on a monthly basis since May 2012.

3. Please provide a list of the expired chemicals that were stored in the cabinet in room 221.

ENCLOSURE III
INSTRUCTIONS AND DEFINITIONS

In responding to this Request for Information, apply the following instructions and definitions:

1. The signatory should be an officer or agent who is authorized to respond on behalf of the company or facility. The signatory must complete and return Enclosure IV, Certification of Answers to Responses to Request for Information.
2. A complete response must be made to each individual question in this request for information. Identify each answer with the number of the question to which it is addressed.
3. In preparing your response to each question, consult with all present and former employees and agents of the company or facility who you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify all contributing sources of information.
5. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.
6. If you cannot provide a precise answer to any question, please approximate and state the reason for your inability to be specific.
7. For each document produced in response to this Request for Information, indicate on the document or in some other reasonable manner, the number of the question to which it applies.
8. If anything is deleted from a document produced in response to this Request for Information, state the reason for and the subject matter of the deletion.
9. If a document is requested but is not available, state the reason for its unavailability. In addition, identify any such document by author, date, subject matter, number of pages, and all recipients and their addresses.
10. The company and/or facility for the purposes of this Request for Information is NYC Department of Health-Public Health Laboratory located at 455 First Avenue, New York, NY 10016.

11. A generator of hazardous waste for the purposes of this Request for Information shall be defined as any person (which includes this facility), by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.
12. Solid waste shall be defined for the purposes of this Request for Information as that term is defined in Section 1004(27) of RCRA, as amended, 42 U.S.C. Part 6903(27).
13. Hazardous waste shall be defined for the purposes of this Request for Information as that term is defined in Section 1004(5) of RCRA, as amended, 42 U.S.C. Part 6903(5).
14. Manage shall be defined for the purposes of this Request for Information as to market, generate, treat, store, dispose or otherwise handle.

ENCLOSURE IV
CERTIFICATION OF ANSWERS

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in response to EPA's Request for Information, and all documents submitted herewith; that the submitted information is true, accurate, and complete; and that all documents submitted herewith are complete and authentic, unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Name (print or type)

SIGNATURE _____

DATE _____

TITLE